

**INDEMNIFICATION AND COST RECOVERY AGREEMENT DEVELOPMENT
ENTITLEMENTS AND ENVIRONMENTAL ENTITLEMENTS HEREIN
REFERRED TO AS THE PROJECT**

THIS AGREEMENT is made and entered into on _____ (Month) _____ (Date), _____ (Year), by _____ (Applicant(s)/Authorized Representative), referred to herein as "APPLICANT(S)" and the County of Tulare, CA referred to herein as "Tulare County" or the "County."

R E C I T A L S

WHEREAS, APPLICANT(S) has requested that Tulare County process the project identified as _____ (Application Type), _____ (Project Case Number), submitted by _____

_____, (Name of APPLICANT(S), Address, City, State, Zip Code), which will result in an entitlement consisting of _____ (describe project/Entitlement), on a _____-acre parcel, (collectively "PROJECT") and its ENTITLEMENT BY and TO the COUNTY as described below:

Assessor's Parcel Number(s): _____
Legal Description: (insert or attach as separate document(s)) _____

WHEREAS, APPLICANT(S) desires to indemnify COUNTY from liability or loss connected with the approval or conditional approval of the PROJECT and environmental clearances as provided in this Agreement.

WHEREAS, APPLICANT(S) desires to reimburse COUNTY for all costs incurred by COUNTY for any reason relating to its processing and action relating to the PROJECT and for developing a mitigation and monitoring plan and addressing any lawsuit or appeal by third parties challenging COUNTY'S decision to approve the PROJECT.

NOW, THEREFORE, IT IS MUTUALLY AGREED between COUNTY and APPLICANT(S) as follows:

1. For the purposes of this Agreement, the term COUNTY shall include the County of Tulare, the Tulare County Planning Commission, the Tulare County Zoning Administrator, the Tulare County Board of Supervisors and/or any Tulare County agencies, departments, commissions, agents, officers, or employees. For the purposes of this Agreement, the term APPLICANT(S) shall include all parties applying for discretionary land use approval on the PROJECT, including but not limited to the owner or owners of the property or properties upon which the PROJECT will be sited and the APPLICANT'(S) successor(s)-in-interest.

2. Reimbursements to the COUNTY

The APPLICANT(S) shall pay, by an advance deposit, and reimburse the COUNTY for the monies expended by the COUNTY for the preparation of any necessary documents relating to the processing of and action on the PROJECT including but not limited to Persons or Consultants

retained by the COUNTY, Infrastructure, Planning, Attorney's Fees, and other related expenditures. Reimbursable costs include development of a mitigation and monitoring plan for the COUNTY, including but not limited to staff time, consultant fees and attorneys' fees.

The COUNTY may, at any time, require the APPLICANT(S) to advance funds and/or reimburse COUNTY for costs that will or have been, or for which the COUNTY reasonably anticipates will be, incurred by the COUNTY during the course of any action. Where funds have not been received as requested by the COUNTY, the APPLICANT(S) shall reimburse COUNTY within thirty (30) days of receipt of an itemized written invoice from COUNTY. Failure of the APPLICANT(S) to timely reimburse the COUNTY shall be considered a material violation of the conditions of the approval of the PROJECT. Where said funds have not been deposited or reimbursed by the APPLICANT(S), all work shall be suspended on the APPLICANT'(S) request. Failure to receive funds from the APPLICANT(S) within 45 calendar days of the written notice shall cause the APPLICANT'(S) request to be deemed withdrawn and the APPLICANT'(S) request shall be closed and a new request shall be required.

Ordinance No. 352, as amended, requires a filing fee to be paid at the time of filing an application for a Special Use Permit, Final Site Plan or other land use application. This fee is to cover the cost to the County for advertising, investigations and processing the application through its various stages. If the costs of preparing the written staff report and environmental review exceed the deposit paid, the applicant will be billed an additional fee for staff time as adopted by the Board of Supervisors from time to time. A public hearing before the decision making body will not be scheduled until payment is received. Where applications are flat fees, there shall be no additional requirements to the COUNTY in regard to payment of fees except as mentioned in this paragraph unless the PROJECT is appealed, whereupon the APPLICANT(S) shall be responsible for reimbursement to the COUNTY for all costs, including court costs, associated with the appeal process.

3. Effects of Litigation

In the event that litigation is instituted, and a final judgment is obtained, which invalidates any action of the COUNTY in connection with this PROJECT, then APPLICANT(S) shall have no further obligations whatsoever under this Agreement. COUNTY may tender the defense of any such litigation to APPLICANT(S) and APPLICANT(S) counsel, in which case APPLICANT(S) shall bear all costs of such litigation, including COUNTY'S attorneys' fees, expert witness fees, and court costs in connection therewith.

In the event any legal action or special proceeding is commenced by any person or entity other than a party challenging this Agreement or any provision herein, the parties agree to cooperate with each other in good faith to defend said lawsuit. To the extent the litigation seeks to over-turn or invalidate any approval held by or granted by COUNTY to APPLICANT(S) or affected Subsequent Property Owner, and, in such event, APPLICANT(S) and/or such Subsequent Property Owner shall hold the COUNTY harmless from and defend the COUNTY from all costs and expenses incurred in the defense of such lawsuit, including but not limited to, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in such litigation. The APPLICANT(S) and/or affected Subsequent Property Owner shall not settle any lawsuit on grounds which include, but are not limited to, non-monetary relief, without the consent of the COUNTY. The COUNTY shall act in good faith, and shall not unreasonably withhold, condition or delay consent to settle.

4. Cooperation in the Event of Initiative or Legal Challenge

a. Initiative

Should a non-County initiative measure or measures be enacted which could affect the PROJECT:

(1) APPLICANT(S) and COUNTY shall meet and confer in good faith to mutually determine the proper course of action; and

(2) In the event COUNTY and APPLICANT(S) jointly determine to challenge such initiative measure, APPLICANT(S) shall provide for any challenge to such initiative measure at its sole cost and expense.

(3) In the event that a court determination has the effect of preventing, delaying or modifying the development of the PROJECT as set forth above, COUNTY and APPLICANT(S) shall meet and confer in good faith to determine if there are alternative means of achieving the mutual goals and objectives of this Agreement, in light of such court action.

(4) If any COUNTY approval of the PROJECT is appealed to the Board of Supervisors or if any COUNTY approval of the PROJECT is challenged in Court, the APPLICANT(S) agree(s) to cover all costs associated with said appeal and shall deposit sufficient funding to process an appeal and shall provide security for payment for any liabilities incurred as a result of litigation which is subject to this Agreement. APPLICANT(S) agree to enter into any further agreements as may be required by the Board of Supervisors in its sole discretion from time to time by resolution to clarify the duties, rights and responsibilities under this Agreement.

(5) Failure or refusal by the APPLICANT(S) to provide obligations as required in Section 4 a. (4) of this Agreement, shall result in and be deemed an abandonment of the PROJECT described herein, and all rights accrued to the APPLICANT(S) to proceed under the COUNTY'S discretionary actions in such regard shall be deemed immediately revoked, and the COUNTY will be entitled to seek all remedies available to it under law, including but not limited to breach of contract and/or enforcement of any code violations.

b. Other Legal Challenge

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action. APPLICANT(S) shall bear all costs of such defense including COUNTY'S attorneys' fees, expert witness fees, and court costs.

5. No Duty of COUNTY

It is specifically understood and agreed by the parties that the development contemplated by this Agreement is a private development, that COUNTY has no interest in or responsibility for or duty to third persons concerning any of said improvement, and that APPLICANT(S) shall have full power over the exclusive control of the Property herein described subject only to the limitations and obligations of APPLICANT(S) under this Agreement.

APPLICANT(S) hereby agrees to and shall hold COUNTY and its elected and appointed representatives, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from APPLICANT(S) operations under this Agreement, excepting suits and actions brought by APPLICANT(S) and arising from the gross negligence or willful misconduct of the COUNTY to the extent, if any, that such gross negligence or willful misconduct has contributed to such damage.

6. Indemnification by APPLICANT(S)

This Indemnification and Hold Harmless Agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this Section, regardless of whether or not COUNTY prepared, supplied or approved plans or specifications for the PROJECT, but does not apply to damages and claims for damages caused by the COUNTY with respect to public improvements and facilities after the COUNTY has accepted responsibility for such public improvements and facilities.

The APPLICANT(S) shall defend, indemnify, and hold harmless the County of Tulare (COUNTY), its officials, officers, employees, representatives, agents and attorneys, from and against all claims, proceedings, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the COUNTY'S act or acts leading up to and including approval of any environmental document or mitigation plan granting approvals relating to the PROJECT. APPLICANT(S) obligation to defend, indemnify and hold the COUNTY harmless specifically includes, but is not limited to, any suit or challenge by any third party against the COUNTY which challenges or seeks to set aside, void or annul the legality or adequacy of any environmental document or mitigation plan approved by the COUNTY or any approval related to the PROJECT.

The APPLICANT'(S) obligations to defend, indemnify and hold the COUNTY, its officials, officers and employees, representatives, agents and attorneys harmless under the provisions of this paragraph shall include, but not be limited to, the cost of preparation of any administrative record by COUNTY, staff time, copying costs, attorneys' fees, expert witness fees, court costs, the costs of any judgments or awards against the COUNTY for damages, losses, litigation costs, or attorney's fees arising out of a suit or challenge contesting the adequacy of any approval of the environmental document or mitigation plan, or any approval related to the PROJECT, and the costs of any settlement representing damages, litigation costs and attorney's fees to be paid to other parties arising out of a suit or challenge contesting the adequacy of the approval of the environmental document or mitigation plan or any document or any other approval related to the PROJECT, if the settlement so provides.

7. Further Indemnification

APPLICANT(S) shall defend COUNTY against all claims to attach, set aside, void, or annul COUNTY'S approval (or any condition of said approval) of the PROJECT, and all claims seeking to impose personal liability on COUNTY as a result of COUNTY'S involvement in such PROJECT, and all claims relating to APPLICANT'(S) payment and reimbursement to COUNTY for any costs incurred in connection with COUNTY'S processing of and action on and acceptance of APPLICANT'(S) PROJECT and all claims relating to COUNTY'S mitigation and/or monitoring plan that are related to the APPLICANT'(S) PROJECT.

APPLICANT(S) shall indemnify COUNTY and hold harmless from any and all costs, attorney's fees (including a third party award of attorney's fees), expenses, liabilities, losses, and damages ("damages") of whatever nature rendered against COUNTY as a result of any such claim, except where such damages result solely, exclusively, and 100% from the negligence of COUNTY, and APPLICANT(S) shall specifically indemnify COUNTY and hold COUNTY harmless, from any such damages arising out of the issuance of a writ of mandamus or prohibition or the entry of a judgment against COUNTY based in whole or in part on lack of substantial evidence to support COUNTY'S approval.

8. Third Party Action

The defense and indemnification obligations created by this Agreement shall apply to claims by third parties arising out of the following: COUNTY'S processing of and action on and acceptance of APPLICANT'(S) PROJECT.

APPLICANT(S) acknowledges and waives its rights under California Civil Code Section 1542 which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

9. Termination

The COUNTY may without cause terminate this Agreement by giving written notice as provided below. APPLICANT(S) may not terminate this Agreement for any reason.

10. Notices

Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: TULARE COUNTY RMA
Attention: Director RMA
5961 South Mooney Blvd.
Visalia, CA 93277-9394
559-624-7000 - Office
559-730-2653 – Fax

APPLICANT(S): _____

Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

11. Entire Agreement

This Agreement represents the complete understanding between the parties with respect to matters set forth herein.

12. Enforcement Action

In the event it becomes necessary for COUNTY to take any action against the APPLICANT(S) to enforce or interpret the terms of this Agreement, COUNTY shall be entitled to its reasonable attorneys' fees and costs, including all costs of investigation, and all pre-litigation costs.

13. Severability

If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.

14. Governing Law

The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of California, excluding any statute which directs application of the laws of another jurisdiction. The parties agree that this contract is made in and shall be performed in Tulare County, California.

15. **NO THIRD PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

16. **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

The undersigned APPLICANT(S) expressly warrant his/her authority to enter into this Agreement of any property or properties upon which the PROJECT is sited and the APPLICANT'(S) successors-in-interest. The APPLICANT(S) having read and considered the above provisions, indicate his/her/its/their agreement by their authorized signatures below.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

APPROVED AS TO FORM:

By: Tulare County – County Counsel

COUNTY AUTHORIZATION

By _____ Date _____
Associate Director
Tulare County Resource Management Agency

Michael Washam
Printed Name

APPLICANT(S)

[If the APPLICANT(S) is(are) an Individual(s), use the following signature lines:]

By _____ By _____
Printed Name: _____ Printed Name: _____
APPLICANT APPLICANT
Date: _____ Date _____

[If the APPLICANT(S) is a general or limited partnership, use the following signature lines:]

By _____ Date: _____
Printed Name: _____
General Partner
APPLICANT

[If the APPLICANT(S) is a corporation, use the following signature lines:]

Note: Pursuant to Corporations Code Section 313 a contract with a corporation must be signed by one person from the following corporate officers; chairperson of the board, the president or any vice-president and must also be signed by a second person from the following corporate officers: the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer unless the contract is accompanied by a certified copy of the Board of Directors resolution authorizing the execution of the contract by a single designated officer or person.

APPLICANT(S):

By _____ Date: _____
Printed Name: _____
President or Vice President

By _____ Date: _____
Printed Name: _____
Secretary or Treasurer

[If the APPLICANT(S) is an LLC, use the following signature lines:]

Note: "Corporations Code Section 17157 requires that contracts with an LLC be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager."

By _____

Date: _____

Printed Name: _____

Manager

By _____

Date: _____

Printed Name: _____

Manager